

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

UNITED STATES OF AMERICA,

**Case No. 8:03-CR-77-T-30TBM**

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

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**MOTION FOR CONTINUANCE**

COMES NOW, the Accused, SAMI AMIN AL-ARIAN, by undersigned counsel, and, pursuant to Local Rule 3.09, respectfully moves this Honorable Court for the entry of an Order continuing the currently scheduled trial date of January 5, 2005 to July 11, 2005. In support of the foregoing, counsel state as follows:

**ORIGINAL INDICTMENT**

1. On February 20, 2003, Dr. Al-Arian, along with three (3) other individuals was indicted by a Federal Grand Jury in Tampa.
2. The Original Indictment charged four (4) conspiracies:
  - 1) Conspiracy to Commit Racketeering;
  - 2) Conspiracy to Murder, Maim or Injure Persons at Places Outside the United States;
  - 3) Conspiracy to Provide Material Support;
  - 4) Conspiracy to Make and Receive Contributions of Funds, Goods or services to or For Benefit of Specially Designated Terrorists.

3. In addition to the conspiracy charges, the Indictment charged 46 substantive counts.
4. The largest of the conspiracies charged a RICO conspiracy consisting of 256 numbered paragraphs listed in an introduction and overt acts.
5. The 3 other conspiracies each re-allege over 100 overt acts from the RICO conspiracy.
6. Initially Dr. Al-Arian was represented by court appointed counsel. Irreconcilable differences developed between Dr. Al-Arian and court appointed counsel. On July 25, 2003, the Court granted Dr. Al-Arian's request to relieve court appointed counsel. See Doc. 188.
7. For over 3 months Dr. Al-Arian attempted to represent himself.
8. On October 29, 2003, Dr. Al-Arian's present counsel entered their appearances. See Doc. 351.
9. In the Court's Order of June 12, 2003, the court recognized that discovery itself could consume the entire 18 month period allowed for pre trial preparation. See Doc. 162. It was further observed, by the Court, that 18 months might be the minimum amount of time required to adequately prepare for trial.<sup>1</sup> As of the date of this writing, counsel for Dr. Al-Arian has been in the case only 12 months.
10. Subsequent to the entry of present counsel, several events conspired to create great difficulty in preparing for trial, despite the best efforts of

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<sup>1</sup> "It is likely given the complex nature of the issues in this case and the presence of classified documents that there will be a large number of pretrial motions and that discovery will consume the entire eighteen month period. ... This Court concludes that eighteen months is the minimum amount of time that Al-Arian's co-defendants will require to adequately prepare pretrial motions and for trial if they act diligently." Doc. 162; page 11, footnote 16.

counsel. A trial date of January 5, 2005, would find counsel unprepared and would result in the Accused being denied effective assistance of counsel in violation of the 5<sup>th</sup> and 6<sup>th</sup> Amendments of the United States Constitution and his rights to due process.

### **DISCOVERY**

11. Dr. Al-Arian's conditions of confinement were one difficulty that initially confronted counsel.
12. There were Bureau of Prison limitations imposed upon what the client could bring to meetings with counsel, including the size of the pencils and the number of documents.
13. There were also limitations upon counsel's ability to work with Dr. Al-Arian, including the imposition of a limitation of ½" of legal papers allowable in the attorney-client visitation room. There is also a strict time limitation imposed upon visitation, with 3:00 p.m. the designated cut off time for consultation. The Bureau of Prisons also prohibited Defense counsel from working with Dr. Al-Arian for a period of time because of baseless and unfounded allegations of impropriety.
14. A considerable amount of time was expended by all involved in making available tapes of conversations that form the basis of the government's case.
15. Because these conversations were anticipated to play such an important role in the government's case, other areas of discovery, while not neglected, were left to a later time.

16. The discovery process began by the government furnishing to the Accused CDs of recorded FISA wiretaps. Ultimately, some 20,000 hours of audio on CDs were forwarded to the defense.
17. Hundreds of hours were spent in interpreting the CDs and tapes, with the expectation that the government would ultimately produce a set of translations that could be compared<sup>2</sup>
18. Additionally, the government ultimately furnished a series of Tech Cut Summaries, approximately 29,000 pages reflecting over 6,500 phone calls and faxes, which comprise a large portion of the 10 year wire tap.
19. Reduced to hard copy, these Tech Cuts consist of 27 4" and 5" loose-leaf notebooks.
20. Counsel has been able to review approximately 1/3 (one-third) of these Tech Cuts.
21. Counsel's limited review of the Tech Cuts has revealed some exculpatory materials – plus information relevant to search and seizure issues.
22. On many of the Tech Cuts, the name of the linguist is redacted.
23. The Defense has repeatedly requested the names of the linguists but this evidence has been denied them.
24. The additional discovery consists of over 90 boxes of documents, of varying volume, 20 boxes of documents in the Arabic language, approximately 1200 audiotapes (not yet turned over to the defense), over 800 videocassettes, and 33 hard drives. There is no question that the

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<sup>2</sup> Pursuant to court order, the government produced the first set of transcripts they intend to use on October 1<sup>st</sup>, 2004; however, these translations appear to be 2-5 years old, not new translations as the government suggested in its request to provide the defense with these transcripts 2 to 3 months before trial.

overwhelming majority of the evidence seized in this case pertains to Dr. Al-Arian.

### **DISCOVERY REVIEW**

25. Dr. Al-Arian's status as a pretrial detainee has also hindered the preparation process.
26. Because the federal penitentiary at Colman is not a pre-trial facility, it is admittedly, not equipped to deal with pretrial detainees who have the right to review the evidence. This has resulted in a process that has been at times frustrating and remains to this date incomplete.
27. Dr. Al-Arian is allowed very limited audio review; a few hours every few days. This review is further exacerbated by the failure of prison authorities to insure that the listening equipment is in working order. Audio devices sometimes have not been used for days at a time because the prison authorities failed to recharge the batteries, resulting in a lack of progress of tape review. At times, the listening devices have needed different software, which had to be ordered, again resulting in precious time lost.
28. When Dr. Al-Arian has been transported to Hillsborough County Jail for document review, the Bureau of Prisons has not allowed him to transport his listening devices with him to work in the evenings reviewing tapes.
29. USP Coleman also does not allow for video review, further frustrating the ability of Dr. Al-Arian to analyze the evidence to be used against him at trial.

30. When Dr. Al-Arian is at Hillsborough County Jail, the discovery review process is different, albeit with equally, compelling problems.
31. Because some of the documentary evidence the Accused is allowed to review is “original evidence”, the FBI has not permitted Dr. Al-Arian and counsel unfettered access to the materials.
32. All access to the discovery is monitored by the F.B.I.
33. This decision for monitoring the Accused’s access has resulted in the Accused, his counsel, and an FBI agent all in the small attorney client visiting room at Hillsborough County Jail.
34. The FBI refuses to place an agent outside the door, which has 3 large windows in it, to watch the Accused and counsel. This policy defeats counsel’s ability to privately confer with Dr. Al-Arian about any given piece of evidence.
35. Communication between counsel and the Accused, as a result of the F.B.I.’s concerns, has to occur by passing notes or through whispers. Regular oral communication is impossible without waiving the Attorney Client Privilege.
36. Thus, Counsel and the Accused are not able to have a full and complete discussion of the evidence.
37. The Accused and Counsel have not completed the necessary review even though in the last four weeks, defense counsel has visited Hillsborough County Jail on seventeen (17) separate occasions.

38. A realistic estimate of completed document review would approximate another two months.
39. At times, because of this policy, the FBI has actually watched videos alongside Mr. Hammoudeh, the co-defendant, during his review, in the same cell as the Accused and counsel. At other times counsel and Dr. Al-Arian have been in the same small room as counsel for Mr. Hammoudeh. Any meaningful discussion between counsel and their clients would waive the attorney client privilege.
40. In this evidence review, as orchestrated by the FBI, it is impossible to have a privileged conversation between the Accused and counsel, without having to construct a wall of paper and legal briefs, duck behind it and whisper. The other practical consequence of this restrictive process is that it prolongs the review, i.e. counsel and the client must write everything down and attempt to have a meaningful discussion about the evidence without the evidence being present.

#### **SUPERCEDING INDICTMENT**

41. Both counsel for Dr. Al-Arian formally noticed their appearance on his behalf on October 29, 2003. Up until three weeks ago, counsel have focused their preparation on the indictment returned on February 20, 2003.
42. Three months before the scheduled trial date, on September 21, 2004, the government filed a superceding Indictment, see Doc. 636. This new indictment charges over 100 new overt acts (approximately 50 of which

deal specifically with Dr. Al-Arian), and has added a new defendant in to the conspiracies.

43. The new Rico Indictment consists of 324 paragraphs. It also includes new charges against Dr. Al-Arian such as money laundering and obstruction of justice.
44. These new charges and overt acts compel the defense to focus their analysis and preparation in areas heretofore ignored
45. The addition of new overt acts exacerbate the search through all Tech Cut Summaries because they focus on new crimes, new defendants and concomitantly new areas.
46. The addition of Mazen Al Najjar requires additional thought and may require some totally new strategic and tactical decisions. Mazen Al Najjar is, after all, Sami Al-Arian's brother-in-law. A proper defense of Dr. Al-Arian may require his counsel to respond to at least some of the allegations against Najjar. The Defense has not had sufficient time to consider all the issues that arise as the result of Najjar's indictment.
47. The defense simply needs more time to examine and process the new indictment, the new allegations against Dr. Al-Arian and the allegations against others.

#### **SEARCHES, SEIZURES, AND SUPPRESSION MOTIONS**

48. Upon the entry of the appearances of current counsel in this case, the defense sought to obtain all the materials concerning the searches and seizures in this matter.



49. In their initial meetings with the prosecutors in November of 2003, counsel discussed the search warrants and affidavits with the prosecution. The prosecution responded the search materials were available in the clerk's office.
50. Pursuant to the prosecution's response, counsel went to the clerk's office and sought to obtain the search documents.
51. Counsel was informed by the clerk that the documents were under seal and a motion was required.<sup>3</sup>
52. On December 3, 2003, counsel received an extraordinary letter directly from the Magistrate including a copy of a letter to the Magistrate indicating that the original 1995 search documents had inadvertently been destroyed.
53. Pursuant to a defense Motion to Unseal the Search Warrants, Applications, and Affidavits in this case, see Doc. 387, Magistrate granted the request, see Doc. 395, on December 11<sup>th</sup>, 2003.
54. The Court ordered the government to attempt to locate documents related to the search, have them reviewed and certified as to their authenticity by the respective affiants.
55. Six months later, in June 30, 2004, the defense was copied on a letter from the Government to the Magistrate asserting they had gathered documents from various sources, along with affidavits from the respective affiants, and the attachments.

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<sup>3</sup> Despite being informed by the clerk that the documents were under seal it appears that the documents were in fact unsealed in 1996 – pursuant to the motion made by the news media.

56. Upon the receipt of the June 20, 2004, the Defense wrote the Magistrate requesting information concerning the affidavits and attachments. Counsel's letter remains to date unanswered.
57. In the Magistrate's original letter to defense counsel, dated December 3, 2003, he indicated the following:
- "The order will further direct that the government continue its search for copies of the warrants and accompanying documents and upon their location, file such copies with the court. I will then review the documents to satisfy myself as to their accuracy and copies will be disseminated to all parties."
58. In October of 2004, after hearing nothing from the Magistrate regarding his 'satisfaction' as to the accuracy of the copies the government submitted in its attempt to reconstruct the files, counsel for the defense asked the Magistrate when he would issue an order confirming the accuracy and authenticity of the search documents. Counsel was informed that it was still being 'worked on'. Thereafter, the Magistrate's Chambers phoned defense counsel to inform him he could pick up the documents from the clerk's office. This was on October 7<sup>th</sup>, 2004.
59. The 1995 searches alone of Dr. Al-Arian's home, University office and WISE office resulted in tens of thousands of documents, filling up dozens of boxes. According to the FBI, there were approximately 400,000 documents seized in this case.

#### **HARD DRIVES OF SEIZED COMPUTERS**

60. There were numerous computers seized in 1995. Some of these computers are described as antiquated Macintosh computers.

- 61. We are unable to open the hard drives. We are also informed that the Government cannot open some of these hard drives.
- 62. Our information tells us that the e-mails on the hard drives of these computers seized in the 2003 search might contain substantial materials that may be helpful the Defense.
- 63. Eventually these computers may need to be out sourced to acquire the materials on the hard drive.

#### **IKON & Pegasus**

- 64. On December 1<sup>st</sup>, 2003, IKON, a company that scans documents and delivers them onto CD ROMs in a choice of formats was consulted by the defense. After consultation with the FBI, IKON issued a proposal to satisfy the massive copying needs in this case, i.e. IKON would copy the Discovery and provide it to each Defendant.
- 65. The IKON proposal, which was approved by the F.B.I., involved taking the discovery offsite, having it copied and provided to the Defense.
- 66. While Dr. Al-Arian was desirous in participating, at the time, some attorneys for co-defendants in this matter were not able to share in the expense.
- 67. Subsequently, another company, Pegasus, also vetted by the FBI, issued a bid proposal to meet the copying needs in this matter.
- 68. However, more recently, with respect to offsite copying, the defense learned that the FBI changed its position, and had determined that Pegasus could not import the documents, as originally envisioned, but now had to

do it at the offices of the FBI which will require the expenditure of funds not contemplated originally.

69. This further delayed the photocopying and Pegasus recently claimed they could not finish the process for several more months, perhaps, well into the prosecution's case in chief.
70. The production of the documents by Pegasus would serve to alleviate some of the problems expressed in paragraphs 32 through 37 of this Motion.

### **PREJUDICIAL PRETRIAL PUBLICITY**

71. Currently the state of Florida is engaged in a hotly contested, highly publicized Senatorial campaign. The candidates have both focused their attention on Dr. Al-Arian.
72. Each of the campaigns have hurled accusations against one another calling Dr. Al-Arian a terrorist and virtually echoing the government's case against him.
73. The most recent Martinez flier shows hooded terrorists holding handguns, with the quote "Evil was in her midst and she did nothing."
74. Similarly the Governor of Florida has participated in the aid campaigns, which have labeled Dr. Al-Arian a terrorist.
75. Neither candidate has stated the obvious, that Dr. Al-Arian is presumed innocent, waiting for his opportunity to challenge the integrity of the government's evidence and that fairness would dictate a respect for the judicial process.

76. It is not likely that these prejudicial ads are likely to end before the election in as much as one of the candidates has publicly refused to stop producing his negative ads.
77. As a result, it is difficult to imagine that a potential jury pool would not be adversely impacted by those ads. Dr. Al-Arian's ability to seat 12 jurors would be adversely affected by these ads. Only the passage of time and fairness from the media will ameliorate the harm that has been caused by these negative political ads.
78. We believe it is important to try Dr. Al-Arian in the Tampa community. A trial 6 months from January 5<sup>th</sup> 2005 would not involve the recent adverse publicity.

#### **CLIENT'S AFFIRMATIVE DEFENSE**

79. The Defense is still in the process of fully fleshing out their Affirmative Defense.
80. At this point counsel expects to put on an Affirmative Defense.
81. A substantial amount of work needs to be done with respect to the preparation of defense.
82. Witnesses need to be prepared and subpoenaed.
83. Some of the witnesses are members and former members of the current administration and require leave of Court to subpoena.
84. Counsel asserts that while this aspect of the Defense has not been neglected, because of the massive nature of the Discovery, counsel is not ready to proceed.

85. Counsel is also seeking the assistance of experts and arrangements have not been completed.<sup>4</sup>

### **SEVERANCE**

86. Hatim Naji Fariz's indictment in Chicago, counsel believes, creates a basis for severance. In the Chicago indictment, Mr. Fariz is charged with fraud on a food stamp program. It is alleged that Mr. Fariz was the owner of a business that generated over one million and a half dollars in receipts. This business existed and the receipts generated occurred during the time frames of each of the conspiracies alleged in the indictment. Both the Government and the Defense of Mr. Fariz have stated, on the record and privately, that the case in Chicago is unrelated to the case in Tampa. In his defense Dr. Al-Arian will seek to introduce the indictment and allegations regarding the business owned by Mr. Fariz to establish that **no** money went to Palestinian Islamic Jihad.

### **OUTSTANDING DISCOVERY**

87. Counsel has written to the Government regarding discovery. Many of these letters remain unanswered or answered only partially. The dates are as follows:

- |                       |                                   |
|-----------------------|-----------------------------------|
| 1) October 4, 2004    |                                   |
| 2) September 30, 2004 |                                   |
| 3) September 23, 2004 |                                   |
| 4) June 18, 2004      |                                   |
| 5) May 27, 2004       |                                   |
| 6) May 13, 2004       |                                   |
| 7) April 23, 2004     | Paragraphs (2, 4, and 5)          |
| 8) March 17, 2004     | Paragraphs (2, 3, 4, 5, 6, and 7) |

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<sup>4</sup> Counsel is willing to discuss this further in camera and ex parte.

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|----------------------|---------------------------|
| 9) February 3, 2004  | Paragraphs 1,3, and 4     |
| 10) January 27, 2004 | Paragraphs (5, 7, and 12) |
| 11) November 3, 2003 |                           |

### **CURRENT MOTIONS**

88. Counsel is currently engaged in the preparation of motions with respect to the superceding indictment. Counsel anticipates filing at several motions to dismiss. Counsel is also attempting to review the government's translations, defense translations, and prepare a suppression motion. Counsel is simply unable, physically and mentally to meet the entire task necessary to be ready for trial on January 5<sup>th</sup>, 2005. Counsel would like at least an additional 30 days to complete the Motions and the Motions to Suppress with respect to the New Indictment.

### **WAIVER OF SPEEDY TRIAL**

89. The Accused, Dr. Al-Arian, has been fully informed regarding the preparation of the Defense. He completely agrees that a continuance is appropriate and as such is fully willing to waive his speedy trial rights and have his case declared a complex case pursuant to 18 U.S.C. 3161h8(A).

### **DECLARATIONS OF WILLIAM MOFFITT & LINDA MORENO**

90. Please see attached Declarations of defense counsel executed pursuant to 28 U.S.C. 1746 on behalf of Dr. Al-Arian.

Dated: 21 October 2004

Respectfully submitted,

/s/Linda Moreno  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of October, 2004, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno  
Linda Moreno  
Attorney for Sami Al-Arian